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Subject: U.S. TRADEMARK APPLICATION NO. 85528202 - GRAIN AUDIO - 120331 - EXAMINER BRIEF -
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UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

U.S. APPLICATION SERIAL NO. 85528202

MARK: GRAIN AUDIO



CORRESPONDENT ADDRESS:

ROBERT W SMITH

MCCARTER & ENGLISH LLP

100 MULBERRY STREET FOUR GATEWAY CENTER

NEWARK, NJ 07102-4056

GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/trademarks/index.jsp>

TTAB INFORMATION:

<http://www.uspto.gov/trademarks/process/appeal/index.jsp>

APPLICANT: Grain Audio, LLC

CORRESPONDENT'S REFERENCE/DOCKET NO:

120331

CORRESPONDENT E-MAIL ADDRESS:

rsmith@mccarter.com

EXAMINING ATTORNEY'S APPEAL BRIEF

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ON APPEAL

Applicant: Grain Audio, LLC

Trademark: GRAIN AUDIO

Serial No.: 85528202

Attorney: Robert W. Smith

Address: McCarter & English LLP
100 Mulberry Street, Four Gateway Center
Newark, NJ 07102-4056

EXAMINING ATTORNEY'S APPEAL BRIEF

INTRODUCTION

Applicant has appealed the examining attorney's final refusal to register the proposed mark,

GRAIN AUDIO, for “[a]udio speakers, audio amplifiers, audio receivers, audio mixers, audio decoders, speakers, compact disc players, MP3 controllers, MP3 players, microphones, audio speakers in the nature of music studio monitors, phonographic record players, audio recording equipment, namely audio recorders, digital LP converters, wireless speakers, wireless audio players, portable audio players, portable speakers, powered speakers, and bookshelf speakers,” in International Class 9. Registration was refused on the Principal Register pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. Section 1052(d), on the ground that the mark sought to be registered is likely to be confused with the mark in U.S. Registration No. 2966216, EGRAIN, for “[d]ata processing apparatus and systems, namely, computers and computer networks comprising functional electronic units with electronic circuit substrates; autarchic miniaturized microcomputers capable of build-up and organizing a network autonomously by themselves through wireless communication; microprocessors, computer memories, application-specific integrated circuits (asics); radio frequency (rf) receiver and sender, sensor circuit computer hardware; computer peripherals; electronic display panels and electronic display devices, namely, light-emitting diodes (led's); organic light emitting diodes (oled's); liquid crystal displays (lcd's); computer interface boards; transmitters and receivers for telecommunications, namely, radio transmitters, audio receivers; telephone receivers; transmitters and receivers for electronic, analog, and digital signals, namely, television, radio (rf); network software, namely, network access server operating software.”

STATEMENT OF FACTS

On January 30, 2012, applicant filed an application under Section 1(b) of the Trademark Act seeking to register the proposed mark, GRAIN AUDIO, on the Principal Register for “[a]udio speakers, audio amplifiers, audio receivers, audio mixers, audio decoders, speakers, compact disc players, MP3 controllers/players, microphones, audio speakers in the nature of music studio monitors, phonographic

record players, audio recording equipment, digital LP converters, wireless speakers, wireless audio players, portable audio players, portable speakers, powered speakers, and bookshelf speakers.” On May 14, 2012, the examining attorney refused registration pursuant to Section 2(d) of the Trademark Act on the ground that the mark sought to be registered is likely to be confused with U.S. Registration Nos. 2966216.¹ The examining attorney also required applicant to clarify the identification of goods, to submit a disclaimer of AUDIO and to respond to a request for additional information about the goods.

On October 12, 2012, applicant filed a timely response to the Office action presenting arguments with respect to the likelihood of confusion refusal. Applicant also submitted an acceptable recitation of goods and complied with the disclaimer requirement and the requirement to provide additional information about the goods.

On November 6, 2012, the examining attorney made final the likelihood of confusion refusal with respect to U.S. Registration No. 2966216.

On April 16, 2013, applicant filed a Notice of Appeal. On June 11, 2013, applicant filed its appeal brief. On June 19, 2013, applicant’s brief was forwarded to the examining attorney.

ISSUE

The issue on appeal is whether the proposed mark, GRAIN AUDIO, is likely to cause confusion with the registered mark, EGRAIN (U.S. Registration No. 2966216) pursuant to Trademark Act Section 2(d), 15 U.S.C. Section 1052(d).

ARGUMENTS

¹ The examining attorney also cited U.S. Registration Nos. 3342337 and 3468040 but subsequently withdrew the refusal to register based on these registrations.

Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely a potential consumer would be confused, mistaken, or deceived as to the source of the goods of the applicant and registrant. See 15 U.S.C. §1052(d). A determination of likelihood of confusion under Section 2(d) is made on a case-by case basis and the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) aid in this determination. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d 1344, 1349, 98 USPQ2d 1253, 1256 (Fed. Cir. 2011) (citing *On-Line Careline, Inc. v. Am. Online, Inc.*, 229 F.3d 1080, 1085, 56 USPQ2d 1471, 1474 (Fed. Cir. 2000)). Not all the *du Pont* factors, however, are necessarily relevant or of equal weight, and any one of the factors may control in a given case, depending upon the evidence of record. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d at 1355, 98 USPQ2d at 1260; *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003); see *In re E. I. du Pont de Nemours & Co.*, 476 F.2d at 1361-62, 177 USPQ at 567.

In this case, the following factors are the most relevant: similarity of the marks, similarity and nature of the goods, and similarity of the trade channels of the goods. See *In re Viterra Inc.*, 671 F.3d 1358, 1361-62, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593, 1595-96 (TTAB 1999); TMEP §§1207.01 *et seq.*

I. THE APPLIED-FOR MARK, GRAIN AUDIO, AND THE REGISTERED MARK, EGRAIN, CONVEY SIMILAR COMMERCIAL IMPRESSIONS BECAUSE THEY SHARE THE WORD GRAIN AND BECAUSE THE ADDITIONAL ELEMENTS IN EACH MARK ARE DESCRIPTIVE IN RELATION TO THE GOODS.

Applicant seeks to register the mark GRAIN AUDIO while the registrant uses the mark EGRAIN. The marks convey similar commercial impressions in that they share the word GRAIN. Moreover, the word AUDIO has been disclaimed from the applied-for mark. Thus, the addition of this element does not alter the similarities between the marks because, although marks are compared in their entirety,

one feature of a mark may be more significant or dominant in creating a commercial impression. See *In re Viterro Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Nat'l Data Corp.*, 753 F.2d 1056, 1058, 224 USPQ 749, 751 (Fed. Cir. 1985); TMEP §1207.01(b)(viii), (c)(ii). Disclaimed matter is typically less significant or less dominant when comparing marks. See *In re Dixie Rests., Inc.*, 105 F.3d 1405, 1407, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997); *In re Nat'l Data Corp.*, 753 F.2d 1056, 1060, 224 USPQ 749, 752 (Fed. Cir. 1985); TMEP §1207.01(b)(viii), (c)(ii). Here, purchasers are likely to focus on the term GRAIN for source identification because it is the only non-descriptive wording in the mark.

Furthermore, the addition of the letter E to the registered mark does not alter the similarities in the marks because this notation is descriptive in relation to the registrant's goods. As the dictionary entry featured on page 2 of the Office action dated November 6, 2012 indicates, "e" is a prefix for "electronic." As the dictionary entry featured on page 5 of the same Office action also indicates, "electronic" is defined as "of, concerned with, using, or operated by devices in which electrons are conducted through a semiconductor, free space, or gas." The registrant's goods include electronic devices and devices used to transmit and receive electronic signals, as evidenced by the recitation of goods, which include the following:

- computer networks comprising functional *electronic* units with electronic circuit substrates
- *electronic* display panels
- *electronic* display devices, namely, light-emitting diodes (led's)
- transmitters and receivers for *electronic*, analog, and digital signals, namely, television, radio (rf)

Because the prefix E stands for "electronic" and because the registrant's goods are electronic or are used to transmit and receive electronic signals, the word GRAIN is also the dominant, source-

identifying element in the registered mark. Although, marks are compared in their entireties, one feature of a mark may be more significant or dominant in creating a commercial impression. *See In re Viterra Inc.*, 671 F.3d at 1362, 101 USPQ2d at 1908; *In re Nat'l Data Corp.*, 753 F.2d at 1058, 224 USPQ at 751; TMEP §1207.01(b)(viii), (c)(ii). Greater weight is often given to this dominant feature when determining whether marks are confusingly similar. *See In re Nat'l Data Corp.*, 753 F.2d at 1058, 224 USPQ at 751. Here, because E is descriptive in relation to the registrant's goods, consumers are likely to focus on the word GRAIN in the registered mark because it is the only non-descriptive element in the mark.

Thus, because the wording AUDIO and the notation E are descriptive in relation to the goods, consumers are likely to view the word shared by both marks – GRAIN – as the source-identifying element in the marks. Furthermore, because the marks share word GRAIN and feature the less dominant elements AUDIO and E, the marks as a whole convey highly similar commercial impressions.

Applicant contends that confusion is unlikely because “courts commonly consider that the first portions of marks are likely to be most prominent in the eyes of the consumers.” (Applicant's Brief p.7) Applicant cites *Pikle-Rite Company, Inc. v. Chicago Pickle Co.*, 171 F.Supp. 671, 675 (N.D. Ill 1959), which concerns the marks POL-PAK and POLKA used in relation to pickles. Applicant suggests that E should be regarded as the dominant element in its mark because it is the first portion of the mark. However, if the first portion of a mark is descriptive in relation the goods, it is unlikely that consumers would perceive this portion as the source of the goods, irrespective of whether it appears in the first portion of the mark. As noted above, although marks are compared in their entireties, one feature of a mark may be more significant or dominant in creating a commercial impression. *See In re Viterra Inc.*, 671 F.3d 1358 at 1362, 101 USPQ2d 1905 at 1908; *In re Nat'l Data Corp.*, 753 F.2d 1056 at 1058, 224 USPQ 749 at 751; TMEP §1207.01(b)(viii), (c)(ii). Descriptive or generic matter is typically less significant or less dominant

in relation to other wording in a mark. See *In re Chatam Int'l Inc.*, 380 F.3d 1340, 1342-43, 71 USPQ2d 1944, 1946 (Fed. Cir. 2004); *In re Binion*, 93 USPQ2d 1531, 1534 (TTAB 2009). Furthermore, because E stands for “electronic” and the registrant’s goods are “electronic” goods, it is unlikely that this notation would have any trademark significance in relation to such goods. This case is distinguishable from the case cited by applicant in that the first element in POL-PAK and POLKA is POL and does not appear to be descriptive in relation to pickles.

Applicant also suggests that the letter E is not descriptive in relation the registrant’s goods because it is not disclaimed. However, the letter E is part of the compound word EGRAIN and is not separable from the mark as a whole. If a compound word mark consists of an unregistrable component (in this case, the notation E) and a registrable component (in this case, the word GRAIN) combined into a single word, no disclaimer of the unregistrable component of the compound word will be required. See *In re EBS Data Processing, Inc.*, 212 USPQ 964, 966 (TTAB 1981); TMEP §1213.05(a). Thus, although E is not disclaimed from the mark EGRAIN, the evidence discussed above shows that it is descriptive in relation to registrant’s goods, rendering GRAIN the dominant element in the registered mark.

Applicant also contends that the marks are “vastly different” in that its mark features the term AUDIO and “other distinguishing elements.” (Applicant’s Brief p. 5) However, applicant’s mark is comprised of only two words: GRAIN and AUDIO. The mark shares the first word, GRAIN, with the registered mark. The second word, AUDIO, is disclaimed and, as discussed above, is less dominant in a likelihood of confusion determination because it immediately conveys information about the goods (i.e., that the goods are audio equipment) rather than identify the source of the goods. The mark features no

additional elements. Therefore, contrary to applicant's statement, its mark contains no other elements that distinguish it from the registered mark.

Applicant contends that the examining attorney has dissected the marks and has not considered all of the elements in the marks. However, in analyzing the similarities in the marks, the examining attorney has considered both marks in their entireties and has found that GRAIN AUDIO and EGRAIN convey similar commercial impressions. Applicant cites a number of cases wherein the marks were found to convey different commercial impressions, suggesting that such cases are analogous to the facts of the instant case. However, unlike GRAIN AUDIO and EGRAIN, the marks in the cases cited by applicant feature additional distinguishing elements. For example, *In re Reach Electronics, Inc.*, 175 USPQ 734 (TTAB 1972) features the marks REAC and REACH. As the TTAB noted, "... 'REAC' and 'REACH' are literally words apart from each other. The one letter difference referred to by the examiner is quite significant herein because "REACH" is a commonly used dictionary word which possesses a meaning unlike "REAC" which is and would be recognized as a play on "react" or "reactor". And by reason thereof, "REACH" would be readily distinguishable from "REAC" in appearance, and it does not sound like "REAC" when spoken." *Id.* at 735. In another example, applicant cites *Legow Bros, Inc. v. LeBole Euroconf. S.p.A.*, 503 F. Supp. 209 (E.D. Pa. 1980), featuring the marks LEBOLE and LEBOW CLOTHES. LEBOLE and LEBOW are not similar in appearance and would not be pronounced similarly by consumers, with the first mark likely to be pronounced as "lee-bowl" or "lee-bolé" and the second mark likely to be pronounced as "lee-bow." In another example, applicant cites *New England Fish Co. v. The Hervin Co.*, 179 USPQ 743 (TTAB 1973), featuring the marks BLUE MOUNTAIN KITTY O'S and KITTY. Here, the first mark features additional wording before and after KITTY. The wording BLUE MOUNTAIN and O'S are the additional distinguishing elements in the first mark. Moreover, as the TTAB noted, "the term 'KITTY', as applied to [the parties'] products such as pet food, is, to say the very least, highly suggestive of the pet for whom the products are intended." *Id.* at 746. Therefore, unlike the marks in applicant's examples,

its mark has only one element other than the shared word GRAIN – the disclaimed, descriptive and less dominant word AUDIO. When purchasers call for the goods of applicant and registrant, they are likely to be confused as to the source of the goods because both parties use marks featuring the dominant word GRAIN. Thus, the marks are confusingly similar.

II. THE GOODS OF THE PARTIES ARE IDENTICAL IN PART, ARE OFTEN SOLD TOGETHER AND TRAVEL IN SIMILAR CHANNELS OF TRADE.

A. The goods of the parties are identical in part, and registrant’s “computer peripherals” encompass some of applicant’s goods.

The goods of the parties are identical in part in that they both feature “audio receivers.” Applicant contends that its audio receivers differ from the audio receivers identified in the registration because the receivers in the registration are used for telecommunications. However, receivers, by nature, relate to telecommunications, as they function to receive signals. It is respectfully requested that the Board take judicial notice of the attached definition from dictionary.com, which defines receivers as “a device or apparatus that receives electrical signals, waves, or the like, and renders them perceptible to the senses, as the part of a telephone held to the ear, a radio receiving set, or a television receiving set.”² Therefore, applicant’s audio receivers also function to receive electrical signals and thus relate to telecommunications.

Moreover, the registrant’s goods include “computer peripherals.” Such wording is broad

² The Trademark Trial and Appeal Board may take judicial notice of definitions obtained from dictionaries that (1) are available in a printed format, (2) are the electronic equivalent of a print reference work, or (3) have regular fixed editions. TBMP §1208.04; *see* Fed. R. Evid. 201; 37 C.F.R. §2.122(a); TMEP §710.01(c); *see, e.g., In re Dietrich*, 91 USPQ2d 1622, 1631 n.15 (TTAB 2009) (taking judicial notice of definition from Merriam-Webster Online Dictionary at www.merriam-webster.com); *In re Petroglyph Games Inc.*, 91 USPQ2d 1332, 1334 n.1 (TTAB 2009) (taking judicial notice of definition from Dictionary.com because from The Random House Unabridged Dictionary); *In re Red Bull GmbH*, 78 USPQ2d 1375, 1378 (TTAB 2006) (taking judicial notice of definition from *Encarta Dictionary* because it is readily available in specifically denoted editions via the Internet and CD-ROM). (Please note that the above definition is said to have been obtained from Random House dictionary.)

enough to encompass all types of computer peripherals, including audio speakers and microphones, which are included in applicant's goods. That audio speakers and microphones are computer peripherals is evidenced by the following web pages attached in the Office action dated November 6, 2012 showing that audio speakers and microphones may be used specifically for computers:

1. Page 8: Bose – company that features computer speakers
2. Page 10: CompUSA – online computer store that features stereo speakers and indicates that they “[e]asily connect to your...PC for excellent, well-defined audio.”
3. Page 15: Target – online retail store that features computer speakers
4. Page 18: IntelliReview – features online reviews of the “Top 10 Computer Speakers”
5. Page 23: Amazon – online retailer featuring various types of microphones for computers
6. Page 28: Best Buy – online retailer featuring computer microphones
7. Page 31: Office Max – online retailer featuring computer microphones
8. Page 33: Buydig.com – describes a microphone that “sounds as goods on your desktop as it does in a professional recording studio”
9. Page 34: EverydaySource – features a microphone attached to a laptop computer

Applicant contends that that “computer peripherals” does not encompass some of the goods identified in its identification because the registrant's goods are “tiny, highly technical computer parts used as part of miniature microsystems.” (Applicant's Brief p. 11) This argument should be found unpersuasive because “computer peripherals” encompasses any type of device used with a computer. The Board is respectfully requested to take judicial notice of the attached dictionary entry from Collins English Dictionary which defines “computer peripheral” as “a device that is attached to and controlled

by a computer, such a scanner, printer, or external hard drive.”³ Therefore, “computer peripherals” is not limited to tiny, highly technical computer parts used as part of miniature microsystems. Rather, it encompasses any device that may be attached to and controlled by a computer, including microphones and audio speakers.

Furthermore, applicant impermissibly reads limitations and restrictions into the scope of the registration that are not present therein. Section 7(b) of the Trademark Act, 15 U.S.C. §1057(b), provides that a certificate of registration on the Principal Register shall be prima facie evidence of the validity of the registration, of the registrant’s ownership of the mark, and of the registrant’s exclusive right to use the mark in commerce in connection with the goods or services specified in the certificate. *See In re Dixie Rests., Inc.*, 105 F.3d 1405, 1408, 41 USPQ2d 1531, 1534-35 (Fed. Cir. 1997); *In re Fiesta Palms, LLC*, 85 USPQ2d 1360, 1363 (TTAB 2007); *In re Peebles Inc.* 23 USPQ2d 1795, 1797 n.5 (TTAB 1992); *In re Pollio Dairy Prods. Corp.*, 8 USPQ2d 2012, 2014-15 (TTAB 1988); TMEP §1207.01(d)(iv).

B. The goods of the parties are sold in similar channels of trade and often emanate from a single source under the same mark.

The goods of the parties are related in that they are often sold together, thus travelling in similar channels of trade. This is evidenced by the web pages attached in the Office action dated November 6, 2012 featuring the following:

1. Page 36: Radio Shack – online retail store featuring radio transmitters, MP3 players, audio converters, various types of audio speakers and LCD monitors

³ *Id.* (Please see attached evidence from Barnes & Noble showing that Collins English Dictionary is available in print format and has regular print editions as evidenced by the wording “30th Anniversary Edition.”)

2. Page 52: Fry's.com – online retail store featuring computers, MP3 players, audio speakers, audio amplifiers, radio transmitters, various types of receivers and microphones
3. Page 68: Newegg.com – online retail store featuring telephone receivers, audio speakers, various types of receivers, amplifiers, various types of transmitters, MP3 players, computer memories and audio recorders
4. Page 106: Micro Center - online retail store featuring computers, MP3 players, audio speakers and microphones and LCD displays
5. Page 118: J&R - online retail store featuring computers, MP3 players, audio players, audio amplifiers, audio recorders, compact disc players, audio receivers, audio transmitters and audio speakers

The evidence attached in the Office action dated November 6, 2012 also includes a number of registrations from the USPTO's X-Search database consisting of third party marks registered for use in connection with the same or similar goods listed in the application and cited registration. For example:

1. U.S. Registration No. 3663998 – goods include computers, amplifiers and loudspeakers
2. U.S. Registration No. 3494764 – goods include audio amplifiers, CD players and receivers
3. U.S. Registration No. 3668551 – goods include audio amplifiers and transmitters and receivers for signals
4. U.S. Registration No. 3821196 – goods include audio speakers, microphones, radio transmitters and LCD displays
5. U.S. Registration No. 2707193 – goods include computers and amplifiers
6. U.S. Registration No. 3419904 – goods include electronic transmitters, MP3 players and compact disc players

7. U.S. Registration No. 3226146 – goods include radio transmitters, audio receivers and amplifiers
8. U.S. Registration No. 3535461 – goods include microphones, speakers, audio receivers and transmitters and amplifiers
9. U.S. Registration No. 4226823 – goods include radio receivers and transmitters as well as amplifiers and loudspeakers

This evidence shows that the goods listed in the attached registrations, which are identical or similar to some of the goods identified in the application and cited registration, are of a kind that may emanate from a single source under a single mark. See *In re Anderson*, 101 USPQ2d 1912, 1919 (TTAB 2012); *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993); *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988); TMEP §1207.01(d)(iii).

C. The registrant's goods are not limited as to the types of consumers targeted or as to the channels of trade.

Applicant contends that confusion is unlikely because its goods are sold directly to individual consumers for use in their homes while the registrant's goods are sold in specific channels of trade to sophisticated consumers. Applicant's arguments should be found unpersuasive because it is well settled that, with respect to applicant's and registrant's goods, the question of likelihood of confusion is determined based on the description of the goods stated in the application and registration at issue, not on extrinsic evidence of actual use. See, e.g., *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369-70, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012); *Octocom Sys. Inc. v. Hous. Computers Servs. Inc.*, 918 F.2d 937, 942, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990).

Absent restrictions in an application and/or registration, the identified goods are "presumed to travel in the same channels of trade to the same class of purchasers." *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *Hewlett-Packard Co. v. Packard Press, Inc.*, 281

F.3d 1261, 1268, 62 USPQ2d 1001, 1005 (Fed. Cir. 2002)). Additionally, unrestricted and broad identifications are presumed to encompass all goods and/or services of the type described. *See In re Jump Designs, LLC*, 80 USPQ2d 1370, 1374 (TTAB 2006) (citing *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981)); *In re Linkvest S.A.*, 24 USPQ2d 1716, 1716 (TTAB 1992). In this case, the identification set forth in the registration has no restrictions as to nature, type, channels of trade, or classes of purchasers. Therefore, it is presumed that these goods travel in all normal channels of trade, and are available to the same class of purchasers. As such, applicant's reference to articles indicating that the registrant's goods are used only for "logistics and transport" should not be found persuasive because the registration does not limit the field in which the goods are used.

Furthermore, like applicant's goods, the registrant's goods are of the type that may also be purchased by individuals for use in their homes. Consumers of goods identified in the cited registration are not limited to sophisticated purchasers. As evidenced by the various online retail websites discussed previously, ordinary consumers, including individual consumers, may purchase goods such as telephone receivers, audio receivers, liquid crystal displays and computer peripherals from an online retail store and may use such goods in various applications, including in their homes. That an ordinary consumer may purchase such goods online also shows that one need not be a sophisticated purchaser to purchase such goods. Assuming, *arguendo*, that consumers of the registrant's goods are sophisticated purchasers, the fact that purchasers are sophisticated or knowledgeable in a particular field does not necessarily mean that they are sophisticated or knowledgeable in the field of trademarks or immune from source confusion. TMEP §1207.01(d)(vii); *see, e.g., Imagineering Inc. v. Van Klassens Inc.*, 53 F.3d 1260, 1265, [34 USPQ2d 1526, 1530](#) (Fed. Cir. 1995); *Top Tobacco LP v. N. Atl. Operating Co.*, 101 USPQ2d 1163, 1170 (TTAB 2011). Similarly, even if, as applicant contends, the goods of the parties may be relatively expensive and may be purchased by discriminating purchasers, such purchasers are not

necessarily knowledgeable in the field of trademarks or immune from confusion as to the source of identical, similar or related goods that travel in similar channels of trade.

When purchasers encounter the identical and related goods of applicant and registrant, they are likely to be confused as to the source of the goods by the overlap and association between them. Thus, the goods are closely related.

CONCLUSION

The similarity in connotation and overall commercial impression of the marks and the identical and related nature of the goods support the finding that the applied-for mark, GRAIN AUDIO, for “[a]udio speakers, audio amplifiers, audio receivers, audio mixers, audio decoders, speakers, compact disc players, MP3 controllers, MP3 players, microphones, audio speakers in the nature of music studio monitors, phonographic record players, audio recording equipment, namely audio recorders, digital LP converters, wireless speakers, wireless audio players, portable audio players, portable speakers, powered speakers, and bookshelf speakers” is likely to be confused with the registered mark, EGRAIN, for “[d]ata processing apparatus and systems, namely, computers and computer networks comprising functional electronic units with electronic circuit substrates; autarchic miniaturized microcomputers capable of build-up and organizing a network autonomously by themselves through wireless communication; microprocessors, computer memories, application-specific integrated circuits (asics); radio frequency (rf) receiver and sender, sensor circuit computer hardware; computer peripherals; electronic display panels and electronic display devices, namely, light-emitting diodes (led's); organic light emitting diodes (oled's); liquid crystal displays (lcd's); computer interface boards; transmitters and receivers for telecommunications, namely, radio transmitters, audio receivers; telephone receivers; transmitters and receivers for electronic, analog, and digital signals, namely, television, radio (rf); network software, namely, network access server operating software.”

For the foregoing reasons, it is respectfully requested that the refusal to register the applied-for mark, GRAIN AUDIO, under Section 2(d) of the Trademark Act, be affirmed.

Respectfully submitted,

/Melissa Vallillo/

Trademark Examining Attorney

Law Office 113

(571) 272-5891

melissa.vallillo@uspto.gov (informal queries only)

Odette Bonnet

Managing Attorney

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- re·ceiv·er** [ri-see-ver] Show IPA
- noun**
- a person or thing that receives.
 - a device or apparatus that receives electrical signals, waves, or the like, and renders them perceptible to the senses, as the part of a telephone held to the ear, a radio receiving set, or a television receiving set.
 - Law.* a person appointed by a court to manage the affairs of a bankrupt business or person or to care for property in litigation.
 - Commerce.* a person appointed to receive money due.
 - a person who knowingly receives stolen goods for an illegal purpose; a dealer in stolen merchandise.

Relevant Questions

- What Is A Receiver?
- How To Receive Welfare I...
- How To Receive Christmas...

Example sentences

Then the receiver lateraled the ball, and the recipient lateraled it again.

Of course, how the receiver of such pictures responds can dampen one's perception.

It tells the receiver you use departmental supplies for non-departmental business.

The receiver should be able to detect an eavesdropper and take appropriate countermeasures.

WALK TO END ALZHEIMER'S
alzheimer's association
START A TEAM

- synonym Game**
- target
 - trustee
 - subject
 - telephone
 - bug
 - beneficiary

Origin:
1300-50; 1875-80 for def 2; receive + -er¹; replacing Middle English *recevour* < Anglo-French *receivour, recevour* (< Old French *recevere*)

Related forms
pre-re-ceiv-er, noun
un-der-re-ceiv-er, noun

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DYNAMO **un-der-re-ceiver, noun**

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Receiver is always a great word to know. **00:03**
So is **zedonk**. Does it mean:
the offering of a zebra and a donkey.
a printed punctuation mark (?), available only in some typefaces, designed to combine the question mark (?) and the exclamation point (!), indicating a mixture of query and interjection, as after a rhetorical question.
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World English Dictionary Collins
receiver (rɪˈsiːvə) [?](#)

OPEN

1. a person who receives something; recipient
2. a person appointed by a court to manage property pending the outcome of litigation, during the infancy of the owner, or after the owner(s) has been declared bankrupt or of unsound mind
3. *chiefly (Brit)* a person who receives stolen goods knowing that they have been stolen
4. the equipment in a telephone, radio, or television that receives incoming electrical signals or modulated radio waves and converts them into the original audio or video signals
5. the part of a telephone containing the earpiece and mouthpiece that is held by the telephone user
6. the equipment in a radar system, radio telescope, etc, that converts incoming radio signals into a useful form, usually displayed on the screen of a cathode-ray oscilloscope
7. an obsolete word for *receptacle*

7. an obsolete word for [receptacle](#)

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9. (US) *sport* a player whose function is to receive the ball, esp a footballer who catches long passes

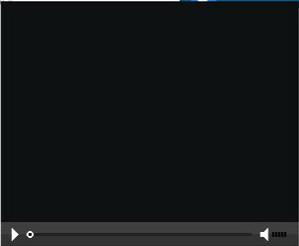
10. the metallic frame situated behind the breech of a gun to guide the round into the chamber

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Science Dictionary American Heritage
receiver (rĭ-sē'var) [Pronunciation Key](#)
A device, as in a radio or telephone, that converts incoming radio, microwave, or electrical signals to a form, such as [sound](#) or light, that can be perceived by humans. Compare [transmitter](#).

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